

information of others to whom the inaccurate or inadequate material was sent.

(3) Where the Commission is currently making an investigation of the issuer, a person controlling the issuer, or one of the underwriters, if any, of the securities to be offered, pursuant to any of the Acts administered by the Commission.

(4) Where one or more of the underwriters, although firmly committed to purchase securities covered by the registration statement, is subject to and does not meet the financial responsibility requirements of Rule 15c3-1 under the Securities Exchange Act of 1934 (§240.15c3-1 of this chapter). For the purposes of this paragraph underwriters will be deemed to be firmly committed even though the obligation to purchase is subject to the usual conditions as to receipt of opinions of counsel, accountants, etc., the accuracy of warranties or representations, the happening of calamities or the occurrence of other events the determination of which is not expressed to be in the sole or absolute discretion of the underwriters.

(5) Where there have been transactions in securities of the registrant by persons connected with or proposed to be connected with the offering which may have artificially affected or may artificially affect the market price of the security being offered.

(6) Where the amount of compensation to be allowed or paid to the underwriters and any other arrangements among the registrant, the underwriters and other broker dealers participating in the distribution, as described in the registration statement, if required to be reviewed by the National Association of Securities Dealers, Inc. (NASD), have been reviewed by the NASD and the NASD has not issued a statement expressing no objections to the compensation and other arrangements.

(7) Where, in the case of a significant secondary offering at the market, the registrant, selling security holders and underwriters have not taken sufficient measures to insure compliance with Regulation M (§§242.100 through 242.105 of this chapter).

(c) Insurance against liabilities arising under the Act, whether the cost of

insurance is borne by the registrant, the insured or some other person, will not be considered a bar to acceleration, unless the registrant is a registered investment company or a business development company and the cost of such insurance is borne by other than an insured officer or director of the registrant. In the case of such a registrant, the Commission may refuse to accelerate the effective date of the registration statement when the registrant is organized or administered pursuant to any instrument (including a contract for insurance against liabilities arising under the Act) that protects or purports to protect any director or officer of the company against any liability to the company or its security holders to which he or she would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office.

[47 FR 11444, Mar. 16, 1982, as amended at 58 FR 18146, Apr. 8, 1993; 60 FR 26615, 26617, May 17, 1995; 62 FR 543, Jan. 3, 1997; 63 FR 6385, Feb. 6, 1998]

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.

(a) A registration statement on Form S-8 (§239.16b of this chapter) and a registration statement on Form S-3 (§239.13 of this chapter) or on Form F-3 (§239.33 of this chapter) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

(b) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is for registering additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission;

(2) The new registration statement is filed prior to the time confirmations are sent or given; and

(3) The new registration statement registers additional securities in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set

forth for each class of securities in the "Calculation of Registration Fee" table contained in such earlier registration statement.

(c) If the prospectus contained in a post-effective amendment filed prior to the time confirmations are sent or given contains no substantive changes from or additions to the prospectus previously filed as part of the effective registration statement, other than price-related information omitted from the registration statement in reliance on Rule 430A of the Act (§230.430A), such post-effective amendment shall become effective upon filing with the Commission.

(d) A post-effective amendment filed solely to add exhibits to a registration statement shall become effective upon filing with the Commission.

[59 FR 21650, Apr. 26, 1994, as amended by 60 FR 26617, May 17, 1995; 62 FR 39763, July 24, 1997]

§ 230.463 Report of offering of securities and use of proceeds therefrom.

(a) Except as provided in this section, following the effective date of the first registration statement filed under the Act by an issuer, the issuer or successor issuer shall report the use of proceeds pursuant to Item 701 of Regulation S-B or S-K or Item 14(e) of Form 20-F, as applicable, on its first periodic report filed pursuant to Sections 13(a) and 15(d) (15 U.S.C. 78m(a) and 78o(d)) of the Securities Exchange Act of 1934 after effectiveness, and thereafter on each of its subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 through the later of disclosure of the application of all the offering proceeds or disclosure of the termination of the offering.

(b) A successor issuer shall comply with paragraph (a) of this section only if a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer.

(c) For purposes of this section:

(1) The term *offering proceeds* shall not include any amount(s) received for the account(s) of any selling security holder(s).

(2) The term *application* shall not include the temporary investment of pro-

ceeds by the issuer pending final application.

(d) This section shall not apply to any effective registration statement for securities to be issued:

(1) In a business combination described in Rule 145(a) (§230.145(a));

(2) By an issuer which pursuant to a business combination described in Rule 145(a) has succeeded to another issuer that prior to such business combination had a registration statement become effective under the Act and on the date of such business combination was not subject to paragraph (a) of this section;

(3) Pursuant to an employee benefit plan;

(4) Pursuant to a dividend or interest reinvestment plan;

(5) As American depository receipts for foreign securities;

(6) By any investment company registered under the Investment Company Act of 1940 and any issuer that has elected to be regulated as a business development company under sections 54 through 65 of the Investment Company Act of 1940 (15 U.S.C. 80a-53 through 80a-64);

(7) By any public utility company or public utility holding company required to file reports with any State or Federal authority.

(8) In a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; or

(9) In an exchange offer for the securities of the issuer or another entity.

[46 FR 48142, Oct. 1, 1981, as amended at 50 FR 19001, May 6, 1985; 57 FR 56834, Dec. 1, 1992; 62 FR 39763, July 24, 1997; 64 FR 53910, Oct. 5, 1999]

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S-8 and on certain Forms S-3, S-4, F-2 and F-3.

Provided. That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S-8 (§239.16b of this chapter); or on Form S-3, F-2 or F-3 (§§239.13, 239.32 or 239.33 of this chapter) for a registration statement relating to a dividend or interest reinvestment plan; or in the case of a registration statement on